IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

AS.No. 677 of 1993(D)

I.A.NO.1670 OF 1990 IN OS.NO.81/1987 OF SUBORDINATE JUDGES COURT, THALASSERY

APPELLANT: RESPONDENT NO.1: DEFENDANT NO.1:

KATTILE PARAMBATH NINKILERI SUBAIDA,
D/O.YUSUF, 29 YEARS, PANNYANNOOR AMSOM,
THALASSERY TALUK.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.P.V.RAMESH SHANKER.

RESPONDENTS: PETITIONERS & RESPONDENTS 2 TO 10:
PLAINTIFFS & DEFENDANTS 2 TO 10:

1. CHEKKYADATH BAVOTTA VALAPPIL MEHROOF,
   S/O.ABDULKHADER, C.B.HOUSE, ATHIRAKAM,
   P.O.MUNDAYAD.

2. BROTHER BASHEER, (MINOR, 17 YEARS)

3. -DO- ABDUL SALAM (MINOR, 14 YEARS)

4. SISTER THAHIRA (MINOR, 10 YEARS)

5. CHEKKYADATH BAVOTTA VALAPPIL NAFEESA,
   D/O.MAMMU, 55 YEARS, C.H.HOUSE, ATHIRAKAM,
   KANNUR TALUK, ELAYAVOOR AMSOM,
   MUNDAYAD DESOM.

6. CHEKKYADATH BAVOTTA VALAPPIL MARIYUMMA,
   D/O. ABDUL KHADER, 37 YEARS, -DO-

7. SISTER -DO- SAINABA, D/O.ABDUL KHADER,
   33 YEARS, -DO-

8. SISTER -DO- ASMA, D/O.ABDUL KHADER, 33 YEARS, -DO-

9. SISTER -DO- SAFIA, D/O.ABDUL KHADER, 29 YEARS, -DO-

10. SISTER -DO-RAMLATH, D/O.ABDUL KHADER, 29 YEARS.

11. BROTHER -DO- YUSUF, S/O.ABDUL KHADER, 24 YEARS, SALESMAN -DO-

12. SISTER -DO- AYSHA KUNHI, D/O.ABDUL KHADER, 37 YEARS.

SUPPL. 13. K.P.ASMA KOYYODAN PUTHIYA PURAYIL HOUSE, PALLIPRAM, MUNDAYAD, KANNUR.

MINOR RESPONDENTS 2 TO 4 THROUGH THEIR NEXT FRIEND FIRST RESPONDENT.

BY ADV. SRI.T.A.RAMADASAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

A.S.NO. 677 OF 1993 D

Dated this the 31st day of January,2007

JUDGMENT

The first defendant in O.S.No.81 of 1987, who is the first respondent in I.A.No.1670 of 1990, which is an application for passing the final decree, is the appellant herein. She challenges the final decree passed by the court below.

2. The relevant portion of the preliminary decree dated 27.11.1989 reads as follows:

> "1. That the plaint schedule property as shown below except the new building thereon be available for partition,
>
> 2. That the said property be divided into 120 equal shares and 49 such shares be allotted to the plaintiffs,
>
> 3. That the rest be go to 1st defendant, as assignee of remaining sharers,
>
> 4. That the property covered by Ext.B2 assignment in favour of tenth defendant be allotted to 1st defendant to the possible extent."

A Commissioner was appointed to divide the property by

metes and bounds. He submitted report, share list, account and plan. The plaint schedule property was divided into two plots. Plot-A, having an extent of 25 3/10 cents, was allotted to the share of the plaintiff while plot-B, having an extent of 32 2/10 cents, was allotted to the share of the first defendant. It is stated that there is a road on the northern side of the property. The Commissioner has divided the property in such a way that both the plaintiff as well as the first defendant would get road frontage to the respective plots allotted to them. It is admitted that the Commissioner allotted the house to the share of the first defendant as directed in the preliminary decree. It is also admitted that the property covered by Ext.B2 assignment deed, executed by the first defendant in favour of the 10th defendant, was allotted to the share of the first defendant. Thus, the directions contained in the preliminary decree have been complied with by the Commissioner.

3. The main objection raised by the first

defendant is that the Commissioner should have allotted the entire northern side of the property to the share of the first defendant. This contention cannot be accepted since both parties are entitled to get allotment of property having road frontage, particularly when the east-west breadth of the property is sufficient enough to make a division, as is now made by the Commissioner. Another objection raised is that the property which ultimately would come to the possession of the first defendant would not have a pathway leading to the road, if Ext.B2 property on the northern side is enclosed separately. The east-west measurement of Ext.B2 property is 55 feet. The Commissioner has allotted plot-B to the share of the first defendant and the east-west measurement on the northern end is 63 feet and on the southern side is 78 feet. Even if 63 feet is taken as the width of the plot allotted to the first defendant, there would be enough space for the ingress and egress to the property of the first defendant, if Ext.B2 property is demarcated and fenced. No evidence was adduced by the

first defendant before the court below to substantiate her contention that the property allotted to her excluding Ext.B2 property would be landlocked, if the Commissioner's plan and report are accepted. From the materials available, the contention of the first defendant that her property would be landlocked by the allotment now made by the Commissioner does not appear to be sustainable.

4. The plaintiff as well as the first defendant filed applications to remit the Commissioner's report and plan to him. According to the plaintiff, the plot allotted to the first defendant is a better plot, while, according to the first defendant, the plot allotted to the plaintiff is the best plot in the property. The plaintiff as well as the first defendant were not able to substantiate their contentions before the court below and the court below was fully justified in rejecting their prayer to remit the Commissioner's report. The Commissioner has made the division fairly and equitably. There is no ground to reject the

Commissioner's report, plan, account and share list. The court below was fully justified in accepting the Commissioner's report, plan, account and share list and in passing a final decree accordingly. The learned counsel for the first respondent submitted that since no stay was granted by this Court, delivery has already taken place. No grounds are made out for interference in the appeal.

The appeal is accordingly dismissed, however, no order as to costs.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

A.S.NO. 677 OF 1993 D

JUDGMENT

31st January, 2007